

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 247 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
MAHENDRAKUMAR C ARYA

Versus

STATE OF GUJARAT

-----  
Appearance:

MR KS ACHARYA for Petitioner

MR VB GHARANIA for Respondent

-----  
CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, a teacher at Dharmaj Kelavani Mandal, Dharmaj, Dist. Kaira, filed this petition before this Court challenging thereunder the order of the Tribunal constituted under the Gujarat Secondary Education Act, 1972. The claim of the petitioner was that he was appointed in the said school as Assistant

Head Master (Second Head) in the year 1963. Under the letter dated 6th August 1968, he was informed that on account of loss and to lessen the expenditure in administrative expenses, the Mandal has decided to abolish the post of Asstt. Head Master with effect from 10.6.68 and accordingly the petitioner will be continued as Assistant Teacher only upto that date. The petitioner made representations against the said order and made grievance that the action of the management in reducing the post of the petitioner was not proper. Because of this order the salary of the petitioner has been reduced and as such he made representation to the District Education Officer, to call upon the management to appoint the petitioner as Second Head and to give him all benefits permissible to that post. What the petitioner complained was that the directions of the District Development Officer were not complied with and on the contrary various allegations were made against the petitioner by the management. Admittedly, the petitioner, in respect of his aforesaid grievance filed Civil Suit No.27 of 1970 in the Court of Civil Judge, Petlad, which was dismissed on 2.8.72 and the appeal filed against the said decision by the petitioner was also dismissed on 21.10.74. From the judgment of the Tribunal it appears that the Civil Court has dismissed the said suit on the ground that it has no jurisdiction to pass any order under the Grant-in-Aid Code. Then admittedly the petitioner preferred appeals before the Director of Education as well as the Government which were dismissed at the relevant time. So the action as well as the order of the management have attained finality. At a later stage, the petitioner had given a letter dated 10th September 1979 to the Government with regard to some of his grievances and the Government has passed an order dated 4th February 1980 declaring that the Government did not approve the act of the management in reducing the applicant as an Assistant Teacher from 10th June 1968 and ordered that he be appointed as Second Head with effect from 10th June 1968. This order has been passed admittedly after the petitioner retired from the services. However, that order has not been given effect to by the management and as such the petitioner preferred an application before the Tribunal constituted under the Gujarat Secondary Education Act, 1972 which has been dismissed under the order dated 29.7.83.

3. The Tribunal has rightly held that much earlier the Government could not find any merits in the claim of the petitioner. How suddenly in February 1980 the Government has passed an order holding that the petitioner should be treated as Second Head from 1968

onwards. The Tribunal has rightly held that the date on which the order has been passed, the petitioner has already retired on superannuation in January 1980. The petitioner has not worked as Second Head right from 1968 till he retired from services. The learned counsel for the petitioner has failed to point out how the petitioner has right to compel management to create a post of Second head. The learned counsel for the petitioner has also failed to cite any provision from Grant-in-Aid Rules as then prevailing that it is obligatory on the part of the school to appoint a Second Head. The school may appoint Second Head in view of the size of the school. The learned counsel for the petitioner is unable to make out a case how the finding recorded by the Tribunal that the Government has no jurisdiction to pass any order with regard to the petitioner after the Tribunal was constituted in the year 1974, is perverse. In view of this fact, the Tribunal has rightly held that the order passed by the Government in February 1980 was without jurisdiction and as such it was not incumbent upon the management to implement the same. It appears that the petitioner has manipulated the order in February 1980. It is an order which the petitioner got in ignorance of the order which was made earlier by the Government. Earlier decision made by the Government and Director of Education in the appeal of the petitioner regarding his claim of Second Head from 1968 against him has not been challenged by the petitioner before this Court or before any other appropriate forum. That order therefore attained finality and I find sufficient justification in the contention of the learned counsel for the respondent that the Government could not have reviewed that order at a subsequent stage merely on desire of the petitioner.

4. This writ petition is wholly misconceived and the same is therefore dismissed. Rule discharged. No order as to costs.

.....

(sunil)